

AMENDED IN ASSEMBLY APRIL 12, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1150

Introduced by Assembly Member La Suer

February 22, 2005

An act to amend Sections 1992 and 1994 of, to add Sections 1993.1 and 1993.2 to, and to repeal and add Section 1993 of, the Code of Civil Procedure, and to add Section 26744.5 to the Government Code, relating to civil warrants.

LEGISLATIVE COUNSEL'S DIGEST

AB 1150, as amended, La Suer. Civil warrants.

(1) Existing law provides that a witness disobeying a subpoena forfeits to the party aggrieved the sum of \$500, and all damages that he or she may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action. Existing law also authorizes the court or issuing officer to issue an arrest warrant to bring the witness before the court or officer.

This bill would increase the sum of the forfeiture to \$1,500, and expand that provision to apply to any person disobeying a subpoena or court order. The bill would also establish procedures, as specified, as an alternative to issuing a warrant for contempt, pursuant to which a court may issue an arrest warrant for a witness who failed to comply with a subpoena or a person who failed to comply with a court order. The bill would authorize the sheriff to release the person arrested upon his or her promise to appear, would set forth the conditions under which the person arrested may not be released, and would specify the civil assessment for failure to appear upon a promise to appear.

(2) Existing law specifies that every warrant to arrest or commit a witness who fails to appear must be directed to the sheriff of the

county where the witness may be, and must be executed by him or her in the same manner as process issued by the superior court.

This bill would delete that provision.

(3) Existing law establishes fees for, among other things, subpoenaing a witness or serving or executing a bench warrant, as specified.

This bill would establish various fees to be collected regarding a warrant for failure to comply with a subpoena or court order, including fees to receive and process the warrant, to cancel the warrant, for *an* inability to find the person after due diligence, *and* to arrest or arrest and release *of* the person, ~~to book the person at a jail facility, and for each day the person is housed at a jail facility.~~ *Specified in forma pauperis fee waiver provisions would apply to that collection.*

By imposing new duties on local law enforcement, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1992 of the Code of Civil Procedure is
2 amended to read:

3 1992. A person disobeying a subpoena or a court order also
4 forfeits to the party aggrieved the sum of one thousand five
5 hundred dollars (\$1,500), and all damages that he or she may
6 sustain by the failure of the person to comply with the subpoena
7 or court order, which forfeiture and damages may be recovered in
8 a civil action.

9 SEC. 2. Section 1993 of the Code of Civil Procedure is
10 repealed.

11 SEC. 3. Section 1993 is added to the Code of Civil
12 Procedure, to read:

1993. (a) As an alternative to issuing a warrant for contempt pursuant to paragraph (5) or (9) of subdivision (a) of Section 1209, the court may issue a warrant for the arrest of a witness who failed to comply with a subpoena or a person who failed to comply with a court order. The court, upon proof of the service of the subpoena or order, may issue a warrant to the sheriff of the county in which the witness or person may be located and shall, upon payment of fees as provided for in Section 26744 of the Government Code, arrest the witness or person and bring him or her before the court.

(b) The warrant shall contain all of the following:

(1) The title and case number of the action.

(2) The name and physical description of the person to be arrested.

(3) The last known address of the person to be arrested.

(4) The date of issuance and county in which it is issued.

(5) The signature of the magistrate issuing the warrant, the title of his or her office, and the name of the court.

(6) A command to arrest the person for failing to comply with the subpoena or court order, and specifying the date of service of the subpoena or court order.

(7) A command to bring the person to be arrested before the nearest magistrate for the setting of bail in the amount of the warrant or to release on the person's own recognizance.

(8) A statement indicating the expiration date of the warrant as determined by the court.

(9) The amount of bail.

(10) An endorsement for nighttime service if good cause is shown as provided in Section 840 of the Penal Code.

(11) A statement indicating whether the person may be released upon a promise to appear as provided by Section 1993.1.

(12) The date and time to appear in court if arrested and released pursuant to paragraph (11).

SEC. 4. Section 1993.1 is added to the Code of Civil Procedure, to read:

1993.1. (a) If authorized by the court as provided by paragraph (11) of subdivision (b) of Section 1993, the sheriff may release the person arrested upon his or her promise to appear as provided in this section.

1 (b) The sheriff shall prepare in duplicate a written notice to
2 appear in court, containing the title of the case, case number,
3 name and address of the person, the offense charged, and the
4 time when, and place where, the person shall appear in court. In
5 addition, the notice shall advise the person arrested of the
6 provisions of Section 1992.

7 (c) The date and time specified in the notice to appear in court
8 shall be that determined by the issuing court pursuant to
9 paragraph (12) of subdivision (b) of Section 1993.

10 (d) The sheriff shall deliver one copy of the notice to appear to
11 the arrested person, and the arrested person, in order to secure
12 release, shall give his or her written promise to appear in court as
13 specified in the notice by signing the duplicate notice, which
14 shall be retained by the sheriff, and the sheriff may require the
15 arrested person, if he or she has no satisfactory identification, to
16 place a right thumbprint, or a left thumbprint or fingerprint if the
17 person has a missing or disfigured right thumb, on the notice to
18 appear. Except for law enforcement purposes relating to the
19 identity of the arrestee, no person or entity may sell, give away,
20 allow the distribution of, include in a database, or create a
21 database with, this print. Upon the signing of the duplicate
22 notice, the arresting officer shall immediately release the person
23 arrested from custody.

24 (e) The sheriff shall, as soon as practicable, file the original
25 notice with the issuing court. The notice may be electronically
26 transmitted to the court.

27 (f) The person arrested shall be released unless one of the
28 following is a reason for nonrelease, in which case the arresting
29 officer either may release the person or shall indicate, on a form
30 to be established by his or her employing law enforcement
31 agency, which of the following was a reason for the nonrelease:

32 (1) The person arrested was so intoxicated that he or she could
33 have been a danger to himself or herself or to others.

34 (2) The person arrested required medical examination or
35 medical care or was otherwise unable to care for his or her own
36 safety.

37 (3) There were one or more additional outstanding arrest
38 warrants for the person.

39 (4) The person arrested demanded to be taken before a
40 magistrate or refused to sign the notice to appear.

(5) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated.

SEC. 5. Section 1993.2 is added to the Code of Civil Procedure, to read:

1993.2. If a person arrested on a civil bench warrant issued pursuant to Section 1993 fails to appear after being released on a promise to appear, the court may issue another warrant to bring the person before the court or assess a civil assessment in the amount of not more than five thousand dollars (\$5,000), which shall be collected as follows:

(a) The assessment shall not become effective until at least 10 calendar days after the court mails a warning notice to the person by first-class mail to the address shown on the promise to appear or to the defendant's last known address. If the person appears within the time specified in the notice and shows good cause for the failure to appear or for the failure to pay a fine, the court shall vacate the assessment.

(b) The assessment imposed under subdivision (a) may be enforced in the same manner as a money judgment in a limited civil case, and shall be subject to the due process requirements governing defense of actions and collection of civil money judgments generally.

SEC. 6. Section 1994 of the Code of Civil Procedure is amended to read:

1994. Every warrant of commitment, issued by a court or officer pursuant to this chapter, shall specify therein, particularly, the cause of the commitment, and if it be for refusing to answer a question, that question shall be stated in the warrant.

SEC. 7. Section 26744.5 is added to the Government Code, to read:

26744.5. (a) The fees for processing a warrant issued pursuant to Section 1993 of the Code of Civil Procedure ~~for failure to comply with a subpoena or court order, including an order of appearance issued under Section 491.160 or 708.170 of the Code of Civil Procedure, are~~ shall be made by the moving party, as follows:

(a)

(1) Fifty dollars (\$50) to receive and process the warrant.

(b)

1 (2) Thirty dollars (\$30) to cancel the service of the warrant.

2 ~~(e)~~

3 (3) One hundred twenty-five dollars (\$125) if unable to find
4 the person at the address specified using due diligence.

5 ~~(d)~~

6 (4) One hundred fifty dollars (\$150) to arrest the person,
7 which shall include the arrest and release of the person on a
8 promise to appear pursuant to Section 1992.2 of the Code of
9 Civil Procedure.

10 ~~(e) One hundred seventy-five dollars (\$175) to book the~~
11 ~~person at a jail facility.~~

12 ~~(f) Seventy-five dollars (\$75) for each day the person is~~
13 ~~housed at a jail facility, which shall be remitted to the jail facility~~
14 ~~by the sheriff following the person's release from the jail facility.~~

15 (b) *The in forma pauperis fee waiver provisions under Rule*
16 *985 of the California Rules of Court shall apply to the collection*
17 *of fees under this section.*

18 SEC. 8. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 a local agency or school district has the authority to levy service
21 charges, fees, or assessments sufficient to pay for the program or
22 level of service mandated by this act, within the meaning of
23 Section 17556 of the Government Code.